

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Replacement of City Hall HVAC Chiller

**SUMMARY:** Approve a Purchase Order with Trane Building Services for the purchase and install of a chiller & cooling tower turnkey for City Hall in an amount not to exceed \$400,922.00.

**FISCAL**

**IMPACT:** Funding for this project is available in the Capital Support account.

**STAFF RECOMMENDATION:**

Staff recommends approval of a Purchase Order Trane Building Services for the purchase and install of a chiller & cooling tower turnkey for City Hall in an amount not to exceed \$400,922.00.

**MOTION RECOMMENDED:**

"I move to adopt Resolution No. 14-40 authorizing staff to proceed with a Purchase Order with Trane Building Services for the purchase and install of a chiller & cooling tower turnkey for City Hall in an amount not to exceed \$400,922.00.

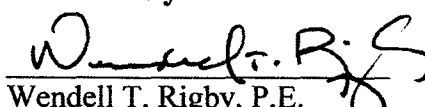
Roll Call vote required.

**Prepared by:**

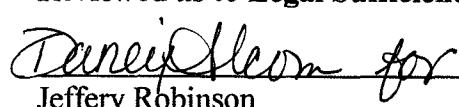
  
Jim Riding

CIP/Facilities/Fleet Project Manager

**Reviewed by:**

  
Wendell T. Rigby, P.E.  
Director of Public Works

**Reviewed as to Legal Sufficiency:**

  
Jeffery Robinson  
City Attorney

**Recommended by:**

  
Richard E. Davis  
City Manager

**BACKGROUND DISCUSSION:**

According to Trane Building Services, the original installer and maintenance contractor of the City Hall chiller system, the chiller is at 200% of its life expectancy. The chiller could last a while longer or could go out at some point in the near future. If the chiller were to go out permanently, it would take about 3 months to order a new chiller, have it delivered and installed. The City would need to rent a chiller to keep the building operational during this period. The cost to install and rent a temporary chiller would be about \$30,000 per month.

With the above information made known, the City Manager has determined it is in the best interest of the City to replace the chiller now. This will be a sole source contract with Trane Building Services since the entire HVAC system in City Hall is Trane equipment and should remain compatible.

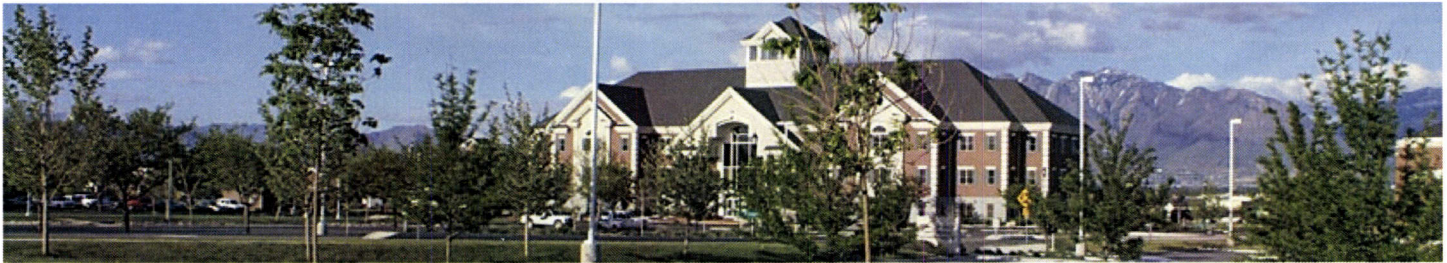
Attachments:

Resolution

Mayor Kim V. Rolfe

# A Comprehensive Comfort Solution for City of West Jordan

*IMPROVING THE HEALING ENVIRONMENT*



Jim Riding  
Director of Facilities  
8030 South 4000 West  
WEST JORDAN, UT  
84088

**DATE:**  
February 11, 2014

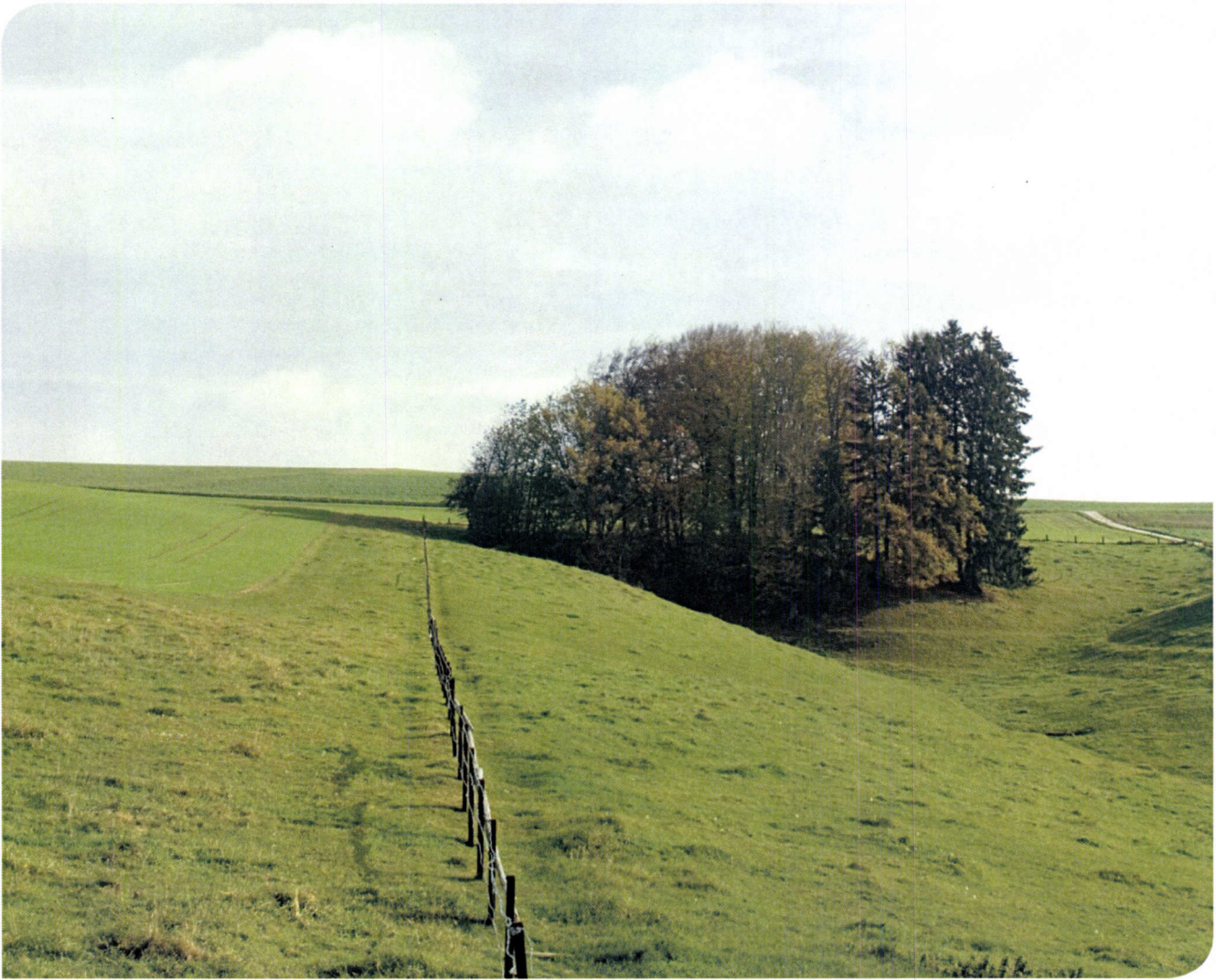




Business Discussion

# Delivering Results

TRANE SAVINGS ASSURANCE



The energy-related upgrades proposed and implemented by Trane are engineered to produce measurable cost savings, and to provide a positive return on your investment.

In addition to the energy-related cost savings that can be anticipated, organizations that choose Trane Turnkey





Contracting Services can expect a number of additional positive outcomes.  
**BUSINESS DISCUSSION**

## Expected Outcomes



### BETTER BUILDING PERFORMANCE

The rewards can be great for organizations that recognize the role their buildings play in supporting core business objectives. Trane helps organizations identify and implement improvements that foster improved productivity while reducing energy-related costs. Employees do their best work when they are comfortable and focused. Trane can help create buildings with optimal conditions for temperature, humidity, light and sound.

### IMPROVED RISK MANAGEMENT

Unforeseen problems with building infrastructure may not always be avoided, but many can be prevented. A reliable heating and cooling system contributes to good risk management in three ways: repairs and unscheduled downtime will be minimized, system air quality and employee productivity will improve, and the money saved can be reinvested in other areas.

### REGULATORY COMPLIANCE

A heating and cooling system that operates smoothly and reliably keeps buildings in compliance with mandated indoor air quality and refrigerant regulations. Rather than continue to support systems that do not properly meet these requirements, Trane can install more appropriate systems. This reduces costs associated with maintaining old systems, and avoids the problems of regulatory non-compliance.

### IMPROVED FINANCIAL PERFORMANCE

In addition to the financial benefits that can be gained through optimized indoor environmental conditions, Trane makes sure the infrastructure and operational changes that are implemented support the organizations identified short-term financial goals and long-term facilities plans.





## BUSINESS DISCUSSION

# Creating High Performance Buildings: Enhancing Indoor Environments

Today's Trane is about much more than heating and cooling. Using a systematic approach, Trane examines all forms of energy consumption in new and existing facilities to create high performance buildings: HVAC, mechanical, plumbing, lighting and more. We take into consideration not only the type of systems we offer ourselves, but those offered by other suppliers as well. To maximize the environmental improvements and cost benefits, all of these key systems must be considered starting at the beginning of the planning process.

The first step is a thorough analysis of the organization's buildings. A comprehensive preliminary study may be conducted to help the customer's leadership teams identify and prioritize opportunities to improve key outcomes and reduce cost. A development study may then be conducted to analyze the technical opportunities. The resulting data guides the Trane proposal for improvements. Trane advisors devise a unique plan—substantiated by predictive modeling—to optimize conditions within the various building spaces.

A lifecycle cost analysis enables the organization to make fact-based decisions regarding which steps to implement first—and which to save for later—to initiate a sustainable and scalable improvement plan that, moving forward, is wholly or substantially self funding. Finally, the plan is implemented by Trane professionals.

Throughout the entire process, Trane works in concert with the organization to deliver solutions that align with its goals and objectives.



## BUSINESS DISCUSSION

# Advantages of Working with Trane

## TRANE TODAY

Trane, a wholly owned subsidiary of Ingersoll Rand (NYSE: IR), enhances the performance of buildings around the world. We have long been recognized as the industry leader for a broad range of energy-efficient building automation, heating, ventilation and air conditioning systems, but equipment is only a small part of the story. Today, Trane is a key resource for organizations that want to leverage their facilities to obtain a variety of core objectives through cost savings and/or optimized conditions.

Trane is a global organization with a business structure that emphasizes local services to customers in every market. The company has more than 125 commercial sales offices in the major metropolitan areas of the United States and Canada. Each office is staffed with experienced engineers and sales professionals.

Trane customer service, training and support are never far away.



## HISTORY OF INNOVATION

Trane was established in 1913. For nearly 100 years, some of the HVAC industry's most significant advancements occurred because Trane pushed the limits of technology to create more comfortable and cost-effective spaces where people work and live. On June 5, 2008, Trane was acquired by Ingersoll Rand (NYSE: IR). Today, Trane is part of a global diversified industrial firm providing products, services and solutions to enhance the quality and comfort in homes and buildings, transport and protect food and perishables, secure homes and commercial properties, and enhance industrial productivity and efficiency.



## OUTLOOK

Our position in the marketplace is consistently strong. That is because Trane has developed a consultative approach to helping customers leverage facilities to achieve their core business goals.

Today, with so many organizations and businesses looking for ways to improve their energy consumption and carbon footprint, the outlook for Trane customers is brighter than ever.





## BUSINESS DISCUSSION

# Eight Reasons to Choose Trane

The partners you select for building improvement projects should be knowledgeable in your type of facilities, of course. They should also understand your operations in general, and the multi-faceted challenges you face. Before making a commitment, we encourage potential customers to assess Trane strengths as a solutions provider based on these key points:

### 1. DEPTH AND BREADTH OF EXPERIENCE

Over the years, the company has worked with thousands of diverse organizations—manufacturers, healthcare providers, schools and more—to optimize their operations. Our work with industrial, educational, residential and commercial clients inspires a cross-industry approach to innovation.

### 2. INTEGRATED APPROACH

Our integrated systems create high performance environments, where HVAC systems and services work together to improve the overall conditions inside the building. By taking a combined approach to energy efficiency, indoor environmental quality (IEQ), acoustics, lighting and life cycle costing, Trane helps organizations gain long-term value.

### 3. EARTH-FRIENDLY PERFORMANCE

The same building solutions that are good for an organization's operating budget are also good for the environment. Trane Turnkey Contracting Services improves environmental sustainability. As a result of the improvements that are implemented, buildings use less of the Earth's resources. Through active involvement with the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®) and other environmental organizations globally, Trane has earned a reputation as a leader in environmentally-responsible building systems.

### 4. TRUSTED EXPERTISE

No supplier understands how environmental control systems work better than Trane: As a long-time manufacturer of controls, components and large-scale engineered heating and cooling systems, our insight into how things run over the long term is unmatched.





## BUSINESS DISCUSSION

# Eight Reasons to Choose Trane

### 5. PERFORMANCE ASSURANCE

With Trane, you can count on results that are tangible and measurable. In fact, the recommended improvements for solving building infrastructure problems and improving efficiency often pay for themselves in energy and operational cost savings.

### 6. VERSATILE SERVICE AGREEMENTS

Trane offers service agreements suitable for every type of customer operation. Opportunities range from in-warranty support and scheduled maintenance to full-scale performance based agreements.

### 7. LONG-TERM OPERATIONS AND MAINTENANCE SUPPORT

Upgraded building systems are meant to save money on energy and cost less to maintain for many, many years. Trane stands by customers to help keep systems working at top efficiency, reduce the chances of equipment failure, and give facilities management the expertise to reach new levels of efficiency. Trane offers a variety of ongoing support opportunities, including training in the optimal operation of HVAC systems. Trane can also provide remote systems monitoring and performance reporting.

### 8. COMPREHENSIVE TEAM

The Trane team includes service technicians, mechanical engineers, professional and project engineers, certified technical specialists and more. The Trane employees who are assigned to your project bring the synergy of the Trane talent pool to your organization.



## BUSINESS DISCUSSION

# Dedicated Resources

Trane Turnkey Contracting Services combines our broad capabilities into a single, customized solution that can address your concerns in building infrastructure and operating efficiencies. Between our staff and qualified subcontractors, we make sure your project will be completed on time, stay within budget and meet your performance expectations. In addition to assigning a local project team, Trane commits additional resources from select third parties as needed. Together, we ensure a successful project.

A team of professionals from Trane has been assembled according to your specific project criteria. These highly qualified individuals have the experience and commitment necessary to make your project a success.

Team members may include the following areas of expertise:



### ACCOUNT MANAGER

A Trane account manager gives customers single-point access to the company's vast pool of resources. Account managers have the company's full network of local and global resources available at their call.

### ENERGY ENGINEER

The main responsibilities of this person include performing an energy analysis of your operations and providing recommendations to improve building performance. The energy engineer models various building improvements to assess their effects on the environment and on the cost of operating the building.

### PROJECT MANAGER

The project manager bears primary responsibility for adherence to the project schedule. Key tasks include administering subcontracts and processing project documentation, document control, project cost accounting, and financial services support. They also oversee subcontractor performance so that work is delivered on time, per specification and within budget.





## BUSINESS DISCUSSION

# Business Approach

### IT TAKES HIGH STANDARDS TO DELIVER HIGH PERFORMANCE

Energy is the largest single operating expense in a typical non-residential building, costing businesses and institutions more than \$24 billion a year—and the cost keeps rising. To reduce the impact of energy expenses, organizations are turning to Trane. Our integrated approach to a building's environmental infrastructure—design, manufacture, deploy and maintain—takes many different shapes and forms to suit the needs of diverse customers. However, the high standards behind Trane business practices always stay the same.

### STANDARD METHODS AND PRACTICES



**Team Approach:** Trane assembles teams of professionals with specialized experience and skills for Turnkey Contracting Services projects. Teams blend the deep engineering resources of Trane with local expertise delivered through field offices and pre-qualified subcontractors.

**Subcontract Management:** Trane methodically selects experienced subcontractors. Following selection, Trane monitors their performance and maintains project controls to ensure sub-contractors adhere to the same high standards as we do. Weekly progress reviews promote timely, safe, high-quality and cost-effective project execution.



## BUSINESS DISCUSSION

### Business Approach



**Environmental, Health and Safety:** Trane employees and our on-site contractors are responsible for integrating sound Environmental, Health and Safety (EHS) practices into their everyday activities, and for acting in a manner that is protective of the environment and human health and safety. We comply with or exceed requirements of global, national, state and local statutes, regulations and standards.

**Responsible Contractor Selection:** Trane maintains a vibrant and diverse business community, based on subcontractor relationships with minority-owned Small Business Enterprises (SBEs), Historically Underutilized Business Zone Small Businesses (HZSBs), Small Disadvantaged Businesses (SDBs), Women-Owned Small Businesses (WOSBs), Veteran-Owned Small Businesses (VOSBs) and Service Disabled Veteran-Owned Small Businesses (SDVOSBs).





## BUSINESS DISCUSSION

# Energy and Environmental Leadership

## THE FACTS ABOUT BUILDINGS AND ENERGY USE

According to the United States Environmental Protection Agency (EPA), buildings in the United States account for...

- 39 percent of total energy use
- 68 percent of total electricity consumption
- 38 percent of the carbon dioxide emissions<sup>1</sup>

As a leader in the HVAC systems that are used to cool and heat buildings, Trane considers it our responsibility to develop solutions that help reduce buildings' energy consumption and impact on the environment.

Trane designs environmentally sound processes and systems that minimize pollution, conserve resources and energy, minimize the use of hazardous materials and reduce waste. We even offer environmentally responsive site planning. Using state-of-the-art software, Trane uses energy modeling to devise solutions that enable buildings to operate at peak efficiency.



<sup>1</sup> "Buildings and their Impact on the Environment: A Statistical Summary." *United States Environmental Protection Agency*. Revised April 22, 2009.





## BUSINESS DISCUSSION

# Energy and Environmental Leadership

## PARTICIPANT IN GLOBAL ENERGY AND ENVIRONMENTAL POLICIES

Around the world, Trane professionals are taking part in the discussions that will define environmental policies and set new standards for sustainable buildings. In addition to our involvement in the United Nations Environment Program (UNEP) and the Clinton Climate Initiative, Trane professionals and leaders represent the industry to the following global organizations:

- The World Green Building Council
- The Alliance to Save Energy
- International District Energy Association
- U.S. Green Building Council

## COMMITMENT TO LEED®

Trane offers solutions that contribute points toward Leadership in Energy and Environmental Design (LEED®) building certification requirements under the categories of Energy & Atmosphere and Indoor Environmental Quality.

Trane is a corporate member of the U.S. Green Building Council (USGBC), and our employees participate in a number Leadership in Energy and Environmental Design (LEED®) committees. In addition to a strong corporate commitment, local Trane sales offices are also aligned with local USGB chapters to better service building owners. Currently, over 700 Trane employees have earned LEED certification, and the number continues to rise.

In 2010, the Trane St. Paul, Minn., facility was awarded LEED Gold Certification for Existing Buildings. The Trane San Antonio regional office has been certified as LEED Silver under the LEED Commercial Interior Program. Several additional Trane buildings are registered and getting ready for LEED certification.

In addition, Trane is now considered a USGBC Education Provider. Trane courses approved by the USGBC can count toward GBCI Continuing Education (CE) hours for LEED Accredited Professionals and LEED Green Associates.



## TECHNICAL DISCUSSION

# Training

Trane is committed to developing professional excellence through continuing education for the company's engineers, technicians and other employees. Our facility houses a dedicated Training Center to support the ongoing education of Trane associates and customers. This commitment to education also shapes our customer service policies.

Because effective training is critical to the success of every Trane Turnkey Contracting Services project, training may be provided to staff at the customer organization on any or all of the following subjects:

1. System changes or additions
2. Anticipated building operations, such as scheduling and set points
3. Operation and maintenance of any new equipment

Training can be conducted on-site at the organization's facility, at a local Trane office or at one of our corporate training facilities.





## TECHNICAL DISCUSSION

# Operations and Maintenance (O&M)

## DOCUMENTATION FOR O&M

After we complete the upgrades and construction for a Turnkey Contracting Services project, Trane will deliver the documentation needed to keep the investment working properly. We will provide one preliminary copy of as-built drawings—floor plans showing the actual building layouts—and an advance copy of the Operations & Maintenance (O&M) manual. Once these deliverables are reviewed and approved, Trane will submit two copies of final O&M documents, including:

- As-built system or installation drawings (or both)
- Equipment submittals
- Service and maintenance procedure manuals
- User and technical manuals

The more knowledgeable your staff members are about system concepts and equipment, the more beneficial these systems will be—and the better your building systems will perform.

## O&M SUMMARY

Trane eliminates confusion and complexity about who is responsible for maintenance, repair and monitoring by clearly defining in the contract which responsibilities belong to Trane and which rest with the customer. As a large global company, we have the leverage to keep costs down for replacement parts—our own and those of other manufacturers. Our integrated approach means that Trane engineers and technicians are trained to work with many brands of equipment, and our extensive network ensures that we have resources close to your building.

At the same time, we have local expertise throughout the country—people who understand the climate, economy, utilities and issues your organization faces. They are your most valuable advisors.



## TECHNICAL DISCUSSION

# Waste Management



## DISPOSAL, REUSE AND RECYCLING

“Green” thinking runs throughout Trane. For its customers as well as its own business, Trane works for sustainability through energy conservation measures (ECMs) that reduce carbon footprint and promote waste reduction through material recycling and reuse.

- **Codes and regulations:** Before starting construction, renovation or demolition, local building codes and permitting requirements are validated and, if necessary, local industry authorities are contacted to obtain regulatory and compliance information.
- **Waste disposal:** Job-site solids with no reuse or recycling potential are sent to appropriate “inert landfills” which manage concrete, asphalt, masonry, ceramics, glass, aluminum, stainless steel and other construction waste. The same materials may be delivered to “limited purpose landfills,” which also accept industrial and demolition waste, scrap wood and “problem waste.”
- **Federal and local compliance:** Trane complies with the U.S. Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and local and state jurisdictions governing materials handling and proper waste disposal.
- **Refrigerant management:** Taking proper care of refrigerants and related oils is critical to protecting the environment—and to sustaining the optimized energy efficiency of equipment that uses refrigerant. Trane technicians, licensed and certified in compliance with 40 CFR, Part 82, Subpart F of the U.S. Clean Air Act, follow a documented, step-by-step process for recovering, reclaiming and recycling refrigerants. The process involves four steps:





## TECHNICAL DISCUSSION

# Supply and Install a Chiller and Closed Loop Cooling Tower

**EQUIPMENT, INSTALLATION, LABOR & MATERIALS**

Scope includes the following activities and requirements.

- **Supply & Install New Trane RTWD Chiller and Closed Loop Cooling Tower:**
  - Lock out and tag out electrical.
  - Provide on sight safety training specific to the site conditions of this project.
  - Provide rigging to facilitate a safe and effective way to move the new chiller to the mechanical room and cooling tower to the existing location.
  - Make all necessary adjustments to the chilled and tower piping needed to accommodate the new chiller and closed loop tower. We will utilize the existing chilled water and tower pumps. We will pipe the new chiller in a parallel loop to utilize the existing chiller as a backup system.
  - Integrate the chiller BACnet interface to the existing Trane Tracer system. Programming for the new chiller only.
  - Provide piping from the new refrigerant vents to the existing header.
  - Insulate the new transition piping and provide repair insulation as needed for piping modifications performed by Trane.
  - Provide a new mechanical pad for the new chiller.
  - Provide a 30% glycol solution in both the chilled and tower system.
  - Balance water flows to match new chiller flow requirements.
  - Install a new manual transfer switch that would feed the existing and new chiller.
  - Make accommodations necessary for the new chiller electrical connections.
  - Includes a new power supply for the refrigerant monitor.
  - Provide Emergency Power Off switches as per code.
  - Provide and install new chilled water coils for both air handlers.
  - Provide local permit and inspection services in accordance with local code.
  - Repair or replacement of building or system deficiency unrelated to this scope of work identified by the building department is not included.
  - Provide and install a stand-alone refrigerant monitor with strobe lights.
  - Trane will provide a 1-year whole unit warranty.
  - Trane chiller will include a 5-year compressor warranty.
  - Trane to provide factory authorized start-up.





## FINANCIAL DISCUSSION

## Pricing & Acceptance

February 11, 2014  
Jim Riding  
City of West Jordan  
8000 So. Redwood Road  
Salt Lake City, UT

**SUPPLY AND INSTALL CHILLER & COOLING TOWER TURNKEY**

.....\$ 400,922.00

**CLARIFICATIONS:**

1. Applicable taxes are included.
2. Any service not listed is not included.
3. Work will be performed during normal Trane business hours.
4. This proposal is valid for until February 11, 2014.

**This agreement is subject to Customer s acceptance of the attached Trane U.S. Inc. Services Terms and Conditions.**

SUBMITTED BY: Jeff Kay		Proposal Date: February 11, 2014	
Account Manager		License Number: 367835-5501	
<b>CUSTOMER ACCEPTANCE</b>		<b>Trane ACCEPTANCE</b>	
Authorized Representative _____		Trane U.S. Inc.	
Printed Name _____		Authorized Representative _____	
Title _____		Title _____	
Purchase Order _____		Signature Date _____	
Acceptance Date _____			





#### TERMS AND CONDITIONS - INSTALLATION

"Company" shall mean Trane U.S. Inc. dba Trane.

**1. Acceptance; Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the goods and/or services described (the "Work"). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counter-offer to provide Work in accordance with the Proposal and the applicable Company terms and conditions in effect at the time of delivery or acceptance of the Work. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Work. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.

**2. Pricing and Taxes.** Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than 3 months from order receipt. If such release is received later than 3 months from order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the 3 month firm price period up to the date of receipt of such release. If such release is not received within 6 months after date of order receipt, the prices are subject to renegotiation, or at Company's option, the order will be cancelled. Any delay in shipment caused by Customer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees.

**3. Exclusions from Work.** Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

**4. Performance.** Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

**5. Payment.** Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

**6. Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.

**7. Access.** Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted.

**8. Completion.** Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the





required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

**9. Permits and Governmental Fees.** Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.

**10. Utilities During Construction.** Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.

**11. Concealed or Unknown Conditions.** In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

**12. Pre-Existing Conditions.** Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

**13. Asbestos and Hazardous Materials.** Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

**14. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**15. Customer's Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice declaring termination, upon which event Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead): (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement.

**16. Indemnity.** Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

**11. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event





will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement. 18. **Patent Indemnity.** Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

19. **Limited Warranty.** Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") equipment manufactured by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Warranty"). **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this Warranty. Defects must be reported to Company within the Warranty period. Exclusions from this Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Additional terms and conditions of warranty coverage are applicable for refrigeration equipment. Some components of Company equipment may be warranted directly from the component supplier, in which event this Company Warranty shall not apply to those components but shall be pursuant to the warranty given by such component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer. Trane equipment sold on an uninstalled basis is warranted in accordance with Trane's standard warranty for supplied equipment. **THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. UNLESS EXPRESSLY WARRANTED IN WRITING FOR CERTAIN HUSSMANN BRANDED EQUIPMENT, COMPANY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE WORK, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE WORK OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

20. **Insurance.** Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

21. **Commencement of Statutory Limitation Period.** Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Trane or its subcontractors physically performed work on the project site.

22. **General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

23. **Equal Employment Opportunity/Affirmative Action Clause.** Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.





**24. U.S. Government Work.** The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

**The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

**NOTICE:** Company is restricted from receiving funds appropriated or otherwise made available under U.S Public Laws 110-161, 111-8, and 111-117.

1-26.251-10(January 31, 2012)

Supersedes 1-26.251-10(October 14, 2011)

